

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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UNITED STATES OF AMERICA,

Plaintiff,

v.

PAUL WEXLER,

Defendant.

Case No. 2:12-cr-00060-MMD-VCF

ORDER

**I. SUMMARY**

Defendant Paul Wexler has served approximately 86% of his sentence (which will be followed by lifetime supervised release) on one count of coercion and enticement. (ECF No. 42 at 1-2.) Before the Court is his motion for compassionate release under 18 U.S.C. § 3582(c)(1)(A) based on the “extraordinary and compelling reasons” presented by the COVID-19 pandemic<sup>1</sup> as applied to his health and particular circumstances (the “Motion”). (ECF No. 42.) The government does not oppose Defendant’s release. (ECF No. 47.) As further explained below, the Court will grant Defendant’s unopposed Motion because “(1) he is suffering from ailments that place him at increased risk for COVID-19 infection; (2) he has served 86% of his imprisonment term; (3) he poses a minimal risk to public safety, which can be managed through home confinement and a lifetime of supervision conditions; and (4) the 18 U.S.C. § 3553(a) factors support his release.” (*Id.* at 13.)

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<sup>1</sup>The Court issues this order during the COVID-19 pandemic, as a novel coronavirus is killing many people around the world, and many governments, including the governments of the United States and Nevada, have at least partially shut down their societies and economies in response. (ECF No. 42 at 8-12.)

## 1      **II.      LEGAL STANDARD**

2            As mentioned, Defendant seeks release under the compassionate release  
 3 provision of 18 U.S.C. § 3582(c)(1)(A)(i), as amended by the First Step Act of 2018. (ECF  
 4 Nos. 42 at 1.) This provision offers Defendant a limited exception to the general rule that  
 5 the Court may not modify or reduce the length of a sentence after the Court has imposed  
 6 it. See 18 U.S.C. § 3582(c); *see also U.S. v. Penna*, 319 F.3d 509, 511 (9th Cir. 2003)  
 7 (explaining that generally a court cannot modify a sentence after it has imposed it). “It  
 8 allows the sentencing judge to reduce a sentence based on ‘extraordinary and compelling  
 9 reasons’ after the defendant has asked the BOP [Bureau of Prisons] to bring such a  
 10 motion on her behalf and exhausted all administrative rights to appeal the BOP’s denial  
 11 of that request.” *U.S. v. Mogavero*, Case No. 2:15-cr-00074-JAD-NJK, 2020 WL 1853754,  
 12 at \*2 (D. Nev. Apr. 13, 2020) (citing 18 U.S.C. § 3582(c)(1)(A)(i)). Moreover, before  
 13 granting such a request, the Court “must consider the factors in 18 U.S.C. § 3553(a) ‘to  
 14 the extent that they are applicable,’ and any sentence reduction must be ‘consistent with  
 15 applicable policy statements issued by the Sentencing Commission.’” *Id.* (citations  
 16 omitted).

## 17      **III.      DISCUSSION**

18            Section 3582(c)(1)(A) implies a three-step process under which the Court must  
 19 evaluate compassionate release motions. That process begins with the Court determining  
 20 whether Defendant has satisfied the statutory prerequisites under Section 3582(c)(1)(A).  
 21 The Court then proceeds to evaluating whether Defendant has shown “extraordinary and  
 22 compelling reasons” for the Court to release him under Section 3582(c)(1)(A)(i), and then  
 23 considers the applicable sentencing factors under Section 3553(a). Here, the parties  
 24 agree the Court should grant Defendant’s Motion, and thus agree at each of the three  
 25 steps. The Court agrees with the parties, but will briefly address each of the three steps  
 26 of the analysis.

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1           **A.     Statutory Prerequisites**

2           Defendant represents he has satisfied the statutory prerequisites because the  
3     warden denied his compassionate release request, as well as his appeal. (ECF No. 42 at  
4     13.) The government agrees the Court may entertain Defendant's request because the  
5     Warden denied his request, and Defendant's appeal was also denied. (ECF No. 47 at 2.)  
6     For these reasons, the Court finds it has jurisdiction over Defendant's request, and will  
7     move on to the other two steps of the analysis.

8           **B.     Extraordinary and Compelling Reasons**

9           Defendant argues extraordinary and compelling reasons support his request  
10    because his age and underlying medical conditions place him at high risk of contracting  
11    a severe case of COVID-19, and he is at high risk of exposure to COVID-19 because he  
12    is incarcerated. (ECF No. 42 at 13-29.) Specifically, Defendant is nearly 60, and suffers  
13    from "COPD, asthma, high blood pressure (hypertension), Barrett's Esophagus (for which  
14    he has had two ablation procedures and require at least two more), arthritis, and has  
15    suffered two strokes and two heart attacks (2010-2012, respectively)." (*Id.* at 12, 16.) "The  
16    government does not contest that Wexler suffers from medical conditions that put him at  
17    risk of significant complications from COVID-19." (ECF No. 47 at 2.) Moreover, the Court  
18    has reviewed the medical records Defendant filed under seal with his request. (ECF No.  
19    43.) They confirm his representations in his briefing. The Court therefore agrees with the  
20    parties Defendant has shown extraordinary and compelling reasons support his request  
21    because his age and medical conditions place him at high risk of contracting a severe  
22    case of COVID-19. See *U.S. v. Regas*, Case No. 3:91-cr-00057-MMD, 2020 WL  
23    2926457, at \*3-\*4 (D. Nev. June 3, 2020) (finding that extraordinary and compelling  
24    reasons existed to grant compassionate release motion where the combination of the  
25    Defendant's age and underlying health conditions placed him at elevated risk of  
26    contracting a severe case of COVID-19).

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1           **C.     Sentencing Factors**

2           The Court must next consider the factors set forth in Section 3553(a) to the extent  
3 they are applicable. These factors include: (1) the nature and circumstances of the  
4 offense and the history and characteristics of the defendant; (2) the need for the sentence  
5 imposed; (3) the kinds of sentences available; (4) the kinds of sentence and the  
6 sentencing range established in the Sentencing Guidelines; (5) any pertinent policy  
7 statement issued by the Sentencing Commission; (6) the need to avoid unwarranted  
8 sentence disparities among defendants with similar records who have been found guilty  
9 of similar conduct; and (7) the need to provide restitution to any victims. See 18 U.S.C. §  
10 3553(a)(1)-(7).

11           Defendant argues these factors favor granting his Motion because: (1) he had no  
12 criminal history at the time of his offense; (2) his disciplinary record since being  
13 incarcerated is spotless; (3) he has been in prison for over seven years and will remain  
14 on supervised release as a registered sex offender for the rest of his life; (4) he has served  
15 approximately 86% of his sentence; and (5) he has a solid release plan in place. (ECF  
16 No. 42 at 2, 30-32.) The government agrees the Section 3553(a) factors support releasing  
17 Defendant because he will remain on lifetime supervised release, “he has served the  
18 great majority of the sentence the Court imposed, had no prior criminal history, and  
19 appears to have a re-entry plan in place.” (ECF No. 47 at 2.) The Court again agrees with  
20 the parties. The Section 3553(a) factors favor granting the Motion.

21           **IV.     CONCLUSION**

22           The Court notes that the parties made several arguments and cited to several  
23 cases not discussed above. The Court has reviewed these arguments and cases and  
24 determines that they do not warrant discussion as they do not affect the outcome of the  
25 Motion before the Court.

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1 It is therefore ordered that Defendant's motion for compassionate release (ECF  
2 No. 42) is granted.

3 DATED THIS 12<sup>th</sup> Day of September 2020.

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MIRANDA M. DU  
7 CHIEF UNITED STATES DISTRICT JUDGE  
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